

**CITY OF EUREKA SPRINGS  
COUNCIL MEETING**

Monday – October 8, 2012 6 p.m.

**AGENDA**

**CALL TO ORDER**

**ROLL CALL, ESTABLISH QUORUM**

**PLEDGE OF ALLEGIANCE TO THE FLAG**

**APPROVAL OF THE AGENDA**

**APPROVAL OF THE MINUTES: September 24, 2012**

**COMMISSION, COMMITTEE, AUTHORITY REPORTS AND EXPIRED TERMS:**

**Planning** – Pos. 1 – Mickey Schneider – expired 7/1/11. Pos. 3 – vacant – expires 7/1/13.

Pos. 4 – Jim Morris – expired 7/1/12

**CAPC** – Pos. 1 – vacant – expires 7/1/16. Pos. 4 – Bobbie Foster – expired 6/30/12

**Hospital** – Pos. 2 – vacant – expires 6/1/14. Pos. 5 – Jack Pritchard – expired 6/1/12. Pos. 6 – vacant – expires -- 9/7/15

**Introduction of CEO Chris Bariola**

**Parks** – Pos. 1 – vacant – expired 5/1/12.

**HDC** – Pos. 1 – vacant – expires 11/30/12

**Cemetery**

**PUBLIC COMMENTS**

**UNFINISHED BUSINESS:**

1. Non-conforming Off-Premise Signs – postponed until the sign ordinance is approved – Planning
2. Building permits, parking lots, demolition and construction ordinance – Planning
3. “Weekly” dwelling units list/Moratorium on Bus. License # 199 – Planning
4. Update on the Taxi franchise workshops – to be scheduled after budget workshops -- Mr. DeVito and Ms. Lindblad
5. Discussion of the Auditorium agreement for 2013 – Mr. Pownall and Mr. DeVito
6. Ordinance for Voting by ward – Ms. Lindblad and Mr. Pownall
7. Auditorium heat coil report – Mayor Pate
8. Yellow Bag Committee recommendations – Postponed until second meeting in October
9. Planning Commission research on structures encroaching on public property – written report -- Ms. Ballance and Ms. Lindblad
10. Discussion of sales at City festivals – Mr. Berry and Ms. Lindblad
11. Discussion of the Sign Ordinance – Mr. Pownall and Ms. Ballance
12. Exploration of costs and issues for moving Council meetings to the Court Room – Mr. DeVito and Mr. Raphael
13. Budget Resolution – Mayor Pate

**NEW BUSINESS:**

1. Proposed changes for the definition of Bed and Breakfast – Postponed until reviewed by the City Attorney -- Planning
2. Update on the Zoning map – Postponed until further notice – Planning
3. Status of Fixed Assets list – Mr. Pownall and Ms. Ballance
4. Code that calls for City Council to decide the number of Police Officers – Mr. Pownall and Ms. Ballance
5. Letter from John Cross re: the Eureka – Mr. Pownall and Ms. Lindblad
6. Ramifications of a voluntary tax for the Cemetery Commission – Mr. Berry and Mr. DeVito
7. Discussion of readjustment of vacation water rates – Ms. Lindblad and Ms. Ballance
8. Second quarter financials – A.C.A. 14-43-506
9. Annual ordinance regarding the levying of taxes – Mayor Pate
10. Discussion of meetings in November and December – Ken Pownall and Lany Ballance

**AGENDA SETTING**

**CITY COUNCIL COMMENTS**

**MAYOR'S COMMENTS**

**ADJOURNMENT**

Mayor Morris Pate called the regular meeting of the Eureka Springs City Council to order at 6 p.m. Monday, October 8, 2012, in the jury room on the second floor of the Western District Carroll County Courthouse.

**PRESENT:** Mayor Morris Pate, Aldermen Parker Raphael, Karen Lindblad, Ken Pownall, Butch Berry, Lany Ballance, James DeVito, and City Clerk/Treasurer Ann Armstrong

**PLEDGE OF ALLEGIANCE TO THE FLAG:**

Mayor Pate led the Pledge of Allegiance to the Flag.

**APPROVAL OF THE AGENDA:**

Mr. DeVito moved to approve the agenda. Mr. Pownall seconded. Mayor Pate added a Moratorium on Weekly Rental licensing. It was combined with Unfinished Business #3. Mr. Pownall added Discussion of Meetings in November and December to New Business. He added a break after Unfinished Business. Ms. Ballance seconded both. Mr. Pownall moved to approve as amended. Ms. Lindblad seconded.

Motion carried 6/0/0.

**APPROVAL OF THE MINUTES: September 24, 2012**

Mr. Pownall moved to approve the September 24, 2012 minutes. Mr. DeVito seconded.

Motion carried 6/0/0.

**COMMISSION, COMMITTEE, AUTHORITY REPORTS AND EXPIRED TERMS:**

**Planning** – Chair Beverly Blankenship spoke about the 2013 budget requests and offered information from the Vision Plan.

**CAPC** – no report

**Hospital** – The new CEO, Chris Bariola, introduced himself. He spoke about improving services currently offered and increasing services.

**Parks** – Mayor Pate nominated Myrna Thaxton for Position 1.

**HDC** – no report

**Cemetery** – no report

**PUBLIC COMMENTS:**

**Mickey Schneider** spoke about the Veterans Day Parade scheduled for Saturday, November 10 at 10 a.m. She requested the use of convertibles and food donations for the Meet and Greet. Ms. Schneider noted the 21 gun salute will be on Sunday, November 11 at 11:11 a.m. in the Court House parking lot.

**UNFINISHED BUSINESS:**

**1. Non-conforming Off-Premise Signs**

Postponed until the sign ordinance is approved

**2. Building permits, parking lots, demolition and construction ordinance**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall moved to assign a number and put the ordinance on its first reading. Mr. Raphael seconded.

Motion carried. The Clerk read **ORDINANCE NO. 2161 AN ORDINANCE AMENDING CHAPTERS 11 AND 13 OF THE EUREKA SPRINGS MUNICIPAL CODE, SETTING CERTAIN REQUIREMENTS ON PERMITS ISSUED IN COMMERCIAL ZONES**. Mr. DeVito moved to approve Ordinance No. 2161 on its first reading. Mr. Pownall seconded. A roll call vote followed.

Motion carried 5/1/0 with Mr. Berry voting “No”.

Mr. Berry’s objection was for the Planning Commission to review the plans for conformity to the building and construction codes. He noted they are not certified and the Building Official is. Mr. Berry’s recommendation was for Planning to review for appropriateness and for the Building Official to review for codes.

Mr. Raphael's interpretation of Section 1, number 2 was that the Building Inspector does not have to approve.

**3. "Weekly" dwelling units list/ Moratorium on Weekly Rental licenses**

Mr. DeVito moved to discuss. Mr. Pownall seconded. Mr. Berry motioned to extend the moratorium for another 180 days. Mr. DeVito seconded.

Motion failed 2/4/0 with Ms. Lindblad, Mr. Raphael, Ms. Ballance, and Mr. Pownall voting "No".

Mr. Pownall motioned to assign a resolution number and read for purposes of discussion. Mr. Raphael seconded. A voice vote was taken.

Motion carried 6/0/0. Ms. Armstrong read RESOLUTION NO. 606 A RESOLUTION CONTINUING A MORATORIUM ON THE ISSUANCE OF BUSINESS LICENSES UNDER THE LINE ITEM 199, ALL SERVICES AND BUSINESSES NOT OTHERWISE LISTED. Following discussion, Mr. Pownall motioned to (use) 30 days. Ms. Lindblad seconded. A voice voted was taken.

Motion carried 5/1/0 with Ms. Ballance voting "No".

Mr. Pownall moved to approve Resolution No. 606 as amended. Mr. DeVito seconded. A roll call vote followed.

Motion carried 5/1/0 with Ms. Ballance voting "No".

**4. Update on the Taxi franchise workshops**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. DeVito noted he'll try to set a date since budget workshops are close to being finished.

**5. Discussion of the Auditorium agreement for 2013**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to suspend the rules and postpone until the next meeting. Mr. DeVito seconded. A roll call vote followed.

Motion carried 6/0/0.

**6. Ordinance for voting by ward**

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Mr. Pownall referenced State law options of voting totally by ward, or having one ward position at-large and one for the ward. He enquired as to why the Election Commission does not provide a polling place in each ward. Ms. Lindblad concurred, favored voting by ward, and moved to postpone until the next meeting. Mr. DeVito seconded.

Discussion continued regarding citizen input, the current method which does not allow citizens in a ward to have representation by those they choose, and having the citizens vote for the method. A voice vote on the motion to postpone followed.

Motion carried 6/0/0.

**7. Auditorium heat coil report**

Mr. Raphael moved to discuss. Mr. Berry seconded. Ray Dilfield provided an update on the failed heating system and options recommended by MCC Airworks. One is to replace the system with another that would also use water circulation. The other is to replace the entire system with heat pumps and use the existing duct work. Funds would come from reserves. Mr. Pownall noted the need for a resolution to waive competitive bidding due to the circumstances. Discussion followed regarding funding.

Mayor Pate noted there have been 30 degree nights. Ms. Lindblad called Point of Order and began to cite from Roberts Rules. Mr. DeVito called Point of Order. Ms. Lindblad noted there was one on the floor. Mayor Pate ruled against Ms. Lindblad's Point of Order. Ms. Ballance appealed the decision of the Chair. Mayor Pate said a vote could be taken and that he was not debating. Ms. Ballance called Point of Order. A voice vote was taken.

Motion failed 3/2/1 with Mr. Berry and Mr. DeVito voting "No" and Mr. Raphael abstaining.

Mr. Berry noted that if the competitive bidding were not waived, an engineer would be required, the cost would go up and more time would be taken. Finance Director Lonnie Clark confirmed that \$100,000 is available in reserves. Mr. Pownall made a motion to have two resolutions drawn up. One would waive competitive bidding and the other would transfer \$100,000 from the reserve account for the repair of the Auditorium heating and air system as per the proposal. Mr. DeVito seconded. Discussion followed regarding a performance bond and items on the exclusion list in the MCC estimate. A voice vote followed on waiving competitive bidding.

Motion carried 6/0/0. A voice vote was taken on drawing \$100,000 from reserves.

Motion carried 6/0/0.

**8. Yellow Bag Committee recommendations**

Ms. Ballance announced there will be a public meeting in the Library Annex on Thursday, October 18 at 6:30 p.m.

**9. Planning Commission research on structures encroaching on public property**

Mr. Pownall moved to discuss. Mr. Raphael seconded. Mr. Pownall suggested closing this out since a written response was provided by the Planning Commission. Mr. DeVito seconded. A voice vote followed. Motion carried 4/2/0 with Ms. Lindblad and Ms. Ballance voting “No”.

**10. Discussion of Sales at City festivals**

Mr. Pownall moved to discuss. Mr. DeVito seconded. The Clerk provided the Code section 4.56 Special Events and five suggestions for that specific section. She handed off processing the permits to the Mayor as defined in the Code. Mr. Pownall referenced discussion of Outdoor Sales. Discussion followed regarding another Code section wherein “City-sanctioned” could be added.

Ms. Blankenship presented Ordinance 1953 which addressed Peddlers and Code section 4.48. She said Council could send the Clerk’s recommendations to Planning. Ms. Armstrong reiterated concern about the issues being dealt with outside of the group who deals with them. Ms. Blankenship expressed her opinion that the CAPC Director and the Mayor want the language changed to have the City Clerk deal with (permits under 4.48). She suggested forwarding it to the City Attorney and noted also Planning could leave it alone.

Mr. DeVito moved to table the issue until the next meeting. Mr. Berry seconded.

Motion carried 5/1/0 with Mr. Raphael voting “No”.

**11. Discussion of the Sign Ordinance**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to assign an ordinance number and read the Chapter 7.52 ordinance on its first reading. Mr. DeVito seconded. A roll call vote followed.

Motion carried 6/0/0. The Clerk read **ORDINANCE NO. 2162 AN ORDINANCE READOPTING CERTAIN SECTIONS OF TITLE 7, CHAPTER 7.52, SIGNS THAT WERE INADVERTENTLY MISNUMBERED**. Mr. Pownall moved to approve Ordinance No. 2162 on its first reading. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0.

Mr. DeVito moved to suspend the rules and place Ordinance No. 2162 on its second reading by title only. Mr. Pownall seconded. A roll call vote followed.

Motion carried 6/0/0. Ms. Armstrong read the Ordinance title. Mr. Pownall confirmed that the Ordinance addressed only renumbering. Mr. DeVito moved to approve. Mr. Pownall seconded.

Motion carried 6/0/0.

**12. Exploration of costs and issues for moving Council meetings to the Court Room**

Mr. DeVito moved to defer this item to the next meeting. Mr. Raphael seconded. A voice vote followed.

Motion carried 6/0/0.

**13. Budget Resolution**

Mr. Pownall moved to discuss. Mr. DeVito seconded. Mr. Pownall moved to assign a number to the (version) that included transfers (out) for the Cemetery, for discussion purposes only. Mr. DeVito seconded.

(No vote was taken.) The Clerk read **RESOLUTION NO. 607 A RESOLUTION AMENDING THE ADOPTED 2012 BUDGETS FOR THE CITY OF EUREKA SPRINGS, ARKANSAS, AS A RESULT OF THE MID-YEAR BUDGET REVIEW PROCESS**.

Mr. Pownall called for removing all references to “mid-year” and for listing the Cemetery line as “Miscellaneous Operating Expenses”. Mr. Clark noted the existing account is satisfactory for both payroll and miscellaneous expenses. Mr. Pownall favored adding a separate line for tracking purposes. Ms. Lindblad seconded. A voice vote followed.

Motion carried 6/0/0.

Following brief discussion regarding removing “mid-year”, Mr. Pownall moved to approve Resolution No. 607 as amended with removal of three references to “mid-year”. Ms. Ballance seconded. A voice vote followed.

Motion carried 5/1/0 with Mr. Berry voting “No”.

Mr. Pownall moved to approve Resolution No. 607 as amended. Mr. DeVito seconded. A voice vote followed.

Motion carried 6/0/0. Mayor Pate gave notice of his Veto.

Mr. Pownall called for the ten minute break. Mr. DeVito seconded.

Motion carried 6/0/0.

Mr. DeVito left the meeting due to illness.

**NEW BUSINESS:**

**1. Proposed changes for the definition of Bed and Breakfast**

Ms. Ballance moved to suspend the rules and to discuss. Mr. Berry seconded. A roll call vote followed.

Motion carried 5/0/0.

Mr. Pownall moved to assign an ordinance number and put it on its first reading. Mr. Raphael seconded. A voice vote followed.

Motion carried 5/0/0. The Clerk read **ORDINANCE NO. 2163 AN ORDINANCE TO BETTER DEFINE THE TERM "BED AND BREAKFAST"**.

Mr. Pownall moved to approve Ordinance No. 2163 on its first reading. Mr. Raphael seconded. A roll call vote followed.

Motion carried 5/0/0.

Mr. Pownall moved to suspend the rules and place Ordinance No. 2163 on its second reading by title only. Mr. Raphael seconded. Mr. Berry noted he'd been asked to consider the definition of "breakfast" as "hot breakfast prepared and served on site". Discussion followed regarding enforcement, personal preference, and the goal of defining "on site". A roll call vote for the second reading by title only followed.

Motion carried 4/1/0 with Mr. Berry voting "No". (The Ordinance title was not read.)

Mr. Pownall moved to suspend the rules and place Ordinance No. 2163 on its third reading by title only. Mr. Raphael seconded. Following discussion, a roll call vote was taken.

Motion carried 4/2/0 with Mr. Berry and Ms. Lindblad voting "No" and Mayor Pate adding his "Aye" to carry. Ms. Armstrong read the Ordinance title.

Mr. Pownall moved to approve Ordinance No. 2163 on its third reading. Mr. Raphael seconded.

Motion carried 4/2/0 with Mr. Berry and Ms. Lindblad voting "No" and Mayor Pate adding his "Aye" to carry.

**2. Update on the Zoning map**

Mr. Berry motioned to remove this from the Agenda. There was no second. Mr. Pownall moved to remove this from the Agenda as long as the funding at the current approval level remains for the zoning map. Mr. Raphael seconded. A voice vote followed.

Motion carried 5/0/0.

**3. Status of Fixed Assets list**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Mr. Clark noted the list is up to date as of December 31, 2011. It has just come back from the Auditors. Mr. Clark will review the additions and deletions for 2012 and have it for the next meeting. Ms. Ballance moved to postpone until the next meeting. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

**4. Code that calls for City Council to decide the number of Police Officers**

Ms. Ballance moved to discuss. Mr. Pownall seconded. Mr. Pownall motioned for the Police Chief to be physically present to provide information about the minimum number of officers he needs to operate on a 12 month basis, no later than the first meeting in November. Ms. Ballance seconded for the purpose of discussion. Ms. Ballance moved to amend the motion on the floor by asking for that information by the next meeting. Ms. Lindblad seconded.

Mr. Berry noted the number is provided when the budget is approved and this would be a duplication. Mr. Pownall read the State Statute and discussion followed regarding "shall" in the Statute, inter-local agreements, decreasing population, and need during special events. Mr. Berry Called the Question. Mr. Raphael seconded. A voice vote followed.

Motion carried 5/0/0.

A voice vote on the amended motion followed.

Motion carried 4/1/0 with Mr. Berry voting "No".

**5. Letter from John Cross re: the Eureka**

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Mr. Pownall noted concern from citizens regarding loss of parking revenue due to events and his belief this needs to be addressed by the Administrative side. Ms. Lindblad enquired about how much the City made and how much the Eureka (sponsors) paid for parking. She expressed her concern about the blocking of the fire lane. Mayor Pate agreed to provide a report.

**6. Ramifications of a voluntary tax for the Cemetery Commission**

Mr. Berry moved to defer discussion until the next meeting. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

**7. Discussion of readjustment of vacation water rates**

Mr. Pownall moved to discuss. Ms. Lindblad seconded. Ms. Lindblad moved to defer to the next meeting since the Finance Director is preparing figures. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

**8. Second quarter financials**

Ms. Ballance moved to discuss. Mr. Berry seconded. Ms. Armstrong provided payroll, bank reconciliations, clearing account, receipts, and debt service reports from January through June 2012.

**9. Annual ordinance regarding the levying of taxes**

Mr. Berry moved to discuss. Mr. Pownall seconded. The Clerk noted this is a formality to allow the Quorum Court to fulfill its duties. Ms. Lindblad noted this is not an increase in taxes. Mr. Berry motioned to assign a number and place the ordinance on its first reading. Mr. Raphael seconded. A voice vote followed.

Motion carried 5/0/0. The Clerk read **ORDINANCE NO. 2164 AN ORDINANCE LEVYING A TAX ON ALL REAL AND PERSONAL PROPERTY IN THE CITY OF EUREKA SPRINGS, ARKANSAS.** Mr. Berry moved to approve Ordinance No. 2164 on its first reading. Mr. Raphael seconded. A voice vote followed.

Motion carried 5/0/0.

Mr. Berry moved to suspend the rules and place Ordinance No. 2164 on its second reading by title only. Mr. Raphael seconded. A roll call vote followed.

Motion carried 5/0/0. Ms. Armstrong read the Ordinance title.

Mr. Berry moved to approve Ordinance No. 2164 on its second reading. Mr. Pownall seconded. A voice vote followed.

Motion carried 5/0/0.

**10. November and December meetings**

Mr. Pownall moved to discuss. Ms. Ballance seconded. Following discussion, Ms. Lindblad moved to have a meeting on November 12. Mr. Berry seconded. A voice vote followed.

Motion carried 4/1/0 with Mr. Pownall voting "No".

Ms. Ballance moved to reconsider. Ms. Lindblad seconded. Following discussion, the motion and second were withdrawn. Mr. Pownall moved to suspend the rules and delete the December decision until a later date. Mr. Raphael seconded. A roll call vote followed.

Motion carried 5/0/0.

**AGENDA SETTING:**

Mr. Pownall moved to discuss. Ms. Ballance seconded.

Mayor Pate added the Municipal League Attorney and discussion of the Nellie Clark case.

Mr. Pownall added the discussion with the Municipal League Attorney regarding misfeasance in local government. Ms. Ballance seconded.

Mr. Pownall moved to adjourn. Ms. Ballance seconded.

Motion carried 4/1/0 with Mr. Berry voting "No".

ATTEST:

  
City Clerk/Treasurer Ann Armstrong

APPROVED:

  
Mayor Morris Pate